

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

In the Matter of

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Amendment of Section 73.202(b))
 Table of Allotments)
 FM Broadcast Stations.)
 (Quanah, Archer City, Converse, Flatonia,)
 Georgetown, Ingram, Keller, Knox City,)
 Lakeway, Lago Vista, Llano, McQueeney,)
 Nolanville, San Antonio, Seymour, Waco and)
 Wellington, Texas, and Ardmore, Durant,)
 Elk City, Healdton, Lawton and Purcell,)
 Oklahoma))

MM Docket No. 00-148

RM - 9939

RM - 10198

JUL 19 2004

Federal Communications Commission
 Office of Secretary

To: Office of the Secretary
 The Commission

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

Rawhide Radio, LLC, Capstar TX Limited Partnership, Clear Channel Broadcasting Licenses, Inc. and CCB Texas Licenses, LP. ("Joint Parties"), by their respective counsel, hereby reply to the "Opposition of Charles Crawford to Application for Review" filed on July 7, 2004, in the above captioned proceeding. Charles Crawford ("Crawford") argues that he did not have adequate notice that he should file certain proposals for new FM channel allotments by the comment date established in this proceeding. As a result, Crawford questions the entire process the Commission has used for over 40 years to allocate FM (and TV) channels to the various communities throughout the country.¹ The Joint Parties believe the system has worked very well and that this proceeding is not the proper forum to entertain complaints about the adequacy of notice in general. More importantly, the Joint Parties have offered a viable solution to the notice issue raised by Crawford whereby the Commission would issue a Notice of Proposed Rule Making ("NPRM") combining the Joint Parties' alternate proposal and the conflicting Crawford

¹ In particular, Crawford questions the Commission's reliance on the case of Faye and Richard Tuck, 3 FCC Rcd 5374 (1988) to permit proposals for stations to provide a first local service to communities in Urbanized Areas. Crawford's remarks in this regard are more appropriate for a generic proceeding and are not particularly relevant to the issues here.

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proposals. By doing so, the Commission can eliminate unnecessary further delays and provide service to several communities earlier. In support hereof, the Joint Parties state as follows:

1. On the comment date in this proceeding (October 10, 2000), the Joint Parties presented the Commission with an alternate proposal in addition to the larger counterproposal that was dismissed. However, the alternate proposal was never considered by the Media Bureau. No reason was given by the Bureau for its failure to separately treat the alternate proposal by issuing a NPRM. See Report and Order, (“R&O”) 18 FCC Rcd 9495 (MB 2003); Memorandum Opinion and Order (“MO&O”), (DA04-1080, released 4/27/04). At the time it was filed, there was no Commission policy against offering alternate proposals.²

2. In several cases cited by the Joint Parties, including one decided as recently as June 10, 2004, Milford, Utah, et al., (DA04-1651), the Bureau issued a new NPRM on an alternate proposal that did not conflict with the original petition. The Joint Parties are asking for the same treatment. The Bureau and Crawford have focused on the larger counterproposal and Crawford has focused on the issue of whether the notice was adequate for individuals such as Crawford who may have wanted to file petitions. However, that issue and the larger counterproposal are no longer before the Commission. The larger counterproposal was dismissed and its dismissal was not appealed, a fact that Crawford does not seem to recognize. Crawford continues to expound his theories about the adequacy of notice by explaining how the larger counterproposal fits together (the “labyrinthine trail”) and could not have been a logical outgrowth of the original petition. But that issue does not exist in this Application for Review. The 18 step trail that Crawford enjoys describing is no longer before the Commission. The only issue remaining is whether the Bureau should have ignored the alternate proposal and accepted conflicting proposals filed thereafter.

² The Bureau later raised concerns about entertaining alternate proposals. See Winslow and Sun City West, Arizona, et al., 16 FCC Rcd 9551 (2001). That case indicated it would not restrict alternate proposals retroactively.

3. Subsequent to having received and processed several conflicting petitions, the Bureau recognized that the alternate proposal deserved protection and dismissed these proposals. But in some cases the Bureau had already granted the conflicting petitions. The Application for Review noted the various conflicting proposals filed by Crawford that had been dismissed, among them:

Benjamin, Texas³ (MM Docket No. 01-131)
Mason, Texas (MM Docket No. 01-133)
Batesville, Texas (MM Docket No. 01-130)
Tilden, Texas (MM Docket No. 01-153)
Goldthwaite, Texas (MM Docket No. 01-154)
Evant, Texas (MM Docket No. 01-188)
Harper, Texas (No Rule Making Number)

Even though the Bureau has dismissed these proposals, the Bureau has not accepted and issued an NPRM on the Joint Parties' alternate proposal. Presumably, this means that the Bureau prefers to dismiss everything and have the alternate proposal refiled. The Joint Parties would ordinarily be willing to refile but the Bureau has made a refile impossible due to its failure to have entered the alternate proposal into its data base (ECFS and CDBS). As a result, the Bureau accepted and/or granted several conflicting petitions and applications cited in the Application for Review (at pp. 11-13). As a result, the Joint Parties have suggested that the Bureau issue a new NPRM based on the original filing date of the alternate proposal. In that NPRM, the Bureau can include all subsequently filed conflicting petitions and applications for comparative treatment. Presumably, this is the procedure that the Bureau would have followed had the Joint Parties labeled their alternate proposal a petition for rule making from the start. But the absence of this label does not detract from the fact that the Joint Parties filed a technically acceptable proposal on October 10, 2000. This proposal has much to offer the public interest in terms of first local service (Priority 3) and service to many people (Priority 4). All of Crawford petitions filed after October 10, 2000 should be compared to the Joint Parties' alternate proposal under the

³ Since the Benjamin, Texas proposal is not in conflict with the alternate proposal, the Joint Parties do not object to the Commission granting that allotment.

Commission's allotment priorities. The Joint Parties are only asking that the Commission treat its proposal like it treats every other technically acceptable proposal and institute a rule making proceeding.

4. By issuing a new NPRM which includes the Joint Parties alternate proposal and all subsequent conflicting petitions and applications, the Commission will be giving Crawford the notice he is asking for. If the Bureau were to wait until Crawford appeals every one of his dismissals, and then permits a refiling of all dismissed proposals, it would be a disservice to the public interest. It has already been nearly four (4) years since the Joint Parties filed their proposal. They only ask for consideration of the proposal on its merits. This solution is not only practical, sensible and beneficial to the public interest, it is consistent with numerous past cases⁴ cited by the Joint Parties and avoids needless and endless delays occasioned by Crawford's appeals.

5. Crawford's arguments concerning the deficiencies in the Commission's allocation process are not worth the Commission's attention here. The process has worked well for over 40 years and during all of these years there has seldom been a complaint about the adequacy of notice. Crawford has latched on to a theory which serves his purpose of delaying Commission consideration of the Joint Parties' alternate proposal. Crawford offers no solution to the issues he raises. The Commission should tell Crawford that his complaints about the adequacy of notice are not relevant here. But before doing so, the Bureau should immediately issue a NPRM which includes the Joint Parties' alternate proposal and all other pending (not final) conflicting proposals. No valid purpose is served by waiting until all appeals are finally completed and then telling all interested parties to refile, particularly where the Bureau's error in failing to timely

⁴ Crawford tried to distinguish the cited cases by comparing the distances between the various communities and the distances involved in the Quanah, Texas, et. al., proceeding. These comparisons prove nothing and show how completely irrelevant Crawford's arguments have become. The Commission has entertained many proposals that involve large distances and cut across many states. Indeed, in the AM service, one application precluded other applicants for over 500 miles. See e.g., Robert E. Combs (BNP 20000131ABF) (FCC 04-141, released 7/16/04) where an application for Las Vegas, Nevada, precluded the grant of a conflicting application at Boise, Idaho, more than 500 miles distant.


enter the alternate proposal in its data base precludes a refiling and where the Joint Parties (and the public) have already waited nearly four (4) years.

6. Accordingly, the Joint Parties urge the Commission to issue a NPRM setting forth the Joint Parties' alternate proposal as filed on October 10, 2000, and as updated in the Application for Review.

Respectfully submitted,

RAWHIDE RADIO, LLC

By:

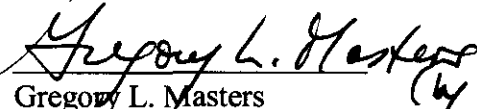

Mark N. Lipp
J. Thomas Nolan
Vinson & Elkins, LLP
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 639-6500

Its Counsel

July 19, 2004

CAPSTAR TX LIMITED PARTNERSHIP
CCB TEXAS LICENSES, LP.
CLEAR CHANNEL BROADCASTING
LICENSES, INC.

By:


Gregory L. Masters
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7370
(by MNL)

Their Counsel

CERTIFICATE OF SERVICE

I, Lisa M. Holland, a secretary in the law firm of Vinson & Elkins, do hereby certify that I have on this 19th day of July, 2004 caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Reply to Opposition to Application for Review" to the following:

- * Robert Hayne, Esq.
Federal Communications Commission
Media Bureau
Audio Division
445 12th Street, SW
Room 3-A262
Washington, DC 20554

Maurice Salsa
5615 Evergreen Valley Drive
Kingwood, TX 77345

Dan J. Alpert, Esq.
Law Office of Dan J. Alpert
2120 North 21st Road
Suite 400
Arlington, VA 22201
(Counsel to M&M Broadcasters, Ltd.,
J & J Fritz Media, Ltd., and On the Air, Inc.)

Gene A. Bechtel, Esq.
Law Office of Gene Bechtel, P.C.
1050 17th Street, NW
Suite 600
Washington, DC 20036
(Counsel to Charles Crawford)

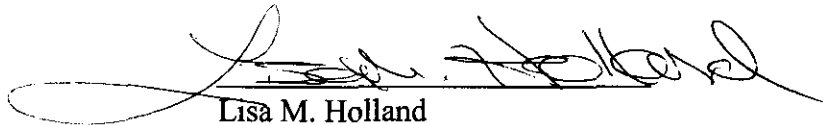
Harry F. Cole, Esq.
Fletcher, Heald & Hildreth
1300 N. 17th Street
11th Floor
Arlington, VA 22209
(Counsel to Elgin FM Limited Partnership)

Arthur V. Belendiuk, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW
Suite 301
Washington, DC 20016
(Counsel to Dilley Broadcasters)

Stargazer Broadcasting, Inc.
c/o David P. Garland
1110 Hackney
Houston, TX 77023

BK Radio
c/o Bryan King
1809 Lightsey Road
Austin, TX 78704

Katherine Pyeatt
6655 Aintree Circle
Dallas, TX 75214



Lisa M. Holland

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